

Application No. 10/528,352
Amendment B dated December 11, 2008
Reply to Office Action mailed July 11, 2008

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed July 11, 2008. Claims 1, 3-6, and 21-33 were pending and rejected in view of cited art.¹ Claims 29 and 30 are cancelled, claims 1, 4, and 32 are amended, and claims 34-42 were added. Claims 1, 3-6, 21-28, and 31-42 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected claims 29-30 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In view of the cancellation of claims 29 and 30, Applicant respectfully requests withdrawal of the rejection under Section 112.

C. PRIOR ART REJECTION

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1, 3-6, and 21-33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0082679 (*Sirhan*) in view of U.S. Patent No. 6,254,631 (*Thompson*). Applicant traverses the Examiner's rejection for obviousness on the

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and new claims can be found throughout the specification and drawings as originally filed.

Application No. 10/528,352
Amendment B dated December 11, 2008
Reply to Office Action mailed July 11, 2008

grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims:

In accordance with Applicant's understanding, *Sirhan* teaches a prosthesis that controls the release of a therapeutic agent (e.g., FK506) for use in inhibiting restenosis and hyperplasia after an intravascular procedure (Abstract). *Sirhan* teaches that "[t]he surface area of the stent for receiving the therapeutic capable agent was increased by increasing the surface roughness of the stent" (Para. 177). With respect to inclusion of roughened inner and side surfaces, the Office Action identifies *Thompson*. No mention is made in *Sirhan* or *Thompson* of this roughened surface being "a sandblast, roughened exterior surface" as recited in independent claims 1, 34, or 39. Further, no mention is made or suggested that the identified roughened surface is: "annealed" as recited in independent claims 34 and 39, or "includes sandblasting particles" as recited in independent claim 39. Applicant respectfully submits that in a similar manner to the terms "'welded', 'intermixed', 'ground in place', 'press fitted' and 'etched' are capable of construction as structural limitations" the phrases "sandblast-roughened" and "sandblast-roughened and annealed" provide structural characteristics to the claimed stent of the stent system. (See MPEP 2113).

Applicant respectfully submits that neither *Sirhan* nor *Thompson* teaches or suggests the identified structural limitations of independent claims 1, 34, and 39. For at least the same reasons described above, the inventions of dependent claims 3-6, 21-28, 31-33, 35-38, and 40-42 are neither taught nor suggested by *Sirhan* or *Thompson*, whether alone or in combination. As such, Applicant respectfully requests withdrawal of the rejection under Section 103 for claims 1, 3-6, 21-28, and 31-33 and submits that claims 34-42 are allowable..

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any

Application No. 10/528,352
Amendment B dated December 11, 2008
Reply to Office Action mailed July 11, 2008

DEC 11 2008

Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 11th day of December, 2008.

Respectfully submitted,



KELLY J. MCCRYSTLE
Registration No. 46,257
In-House Counsel for Abbott Laboratories Vascular
Enterprises, Ltd.
Customer No. 057360

KJM:FDR: kdj
2086511_1.DOC